Quid Novi

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McGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT DE L'UNIVERSITE McGILL

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le 28 fevrier, 1989

Language: To Be or Not To Be...

by R.A. Higgins, BCL IV

I am not from Quebec. French is not my mother-tongue. I am not an expert in constitutional or human rights law. However I do not feel there has been enough debate in the Faculty on the Quebec language issue. Therefore I would like to express an opinion.

I have listened to discussions on "what is a 'collective right'?" In my opinion, this is the right of a group in society, which has been the subject of unjust oppression, to preferential treatment relative to the oppression, so long as the potential for this oppression continues to exist. (Those of you who attended Joseph Ray's lecture last term may be familiar with a source of this proposition).

It is the unjust oppression which gives identity to the group and from which flows this right to preferential treatment. The French majority in Quebec claims this right. They claim to have been oppressed. So do women. So do Blacks. So does the Ku Klux Klan. But not all can correctly claim to have benn *unjustly* oppressed.

Women and Blacks are two identifiable groups which have been put down and discriminated against for a long time. This is wrong and has hurt them. We recognize this. Society has slowly begun to do something about it.

The affirmative action programs allow for the hiring of a woman or a Black based on their sex or race (we all know the scenario: 2 people of more or less equal qualifications...). These policies are, nevertheless, discriminatory against males and whites. There are rights being infringed upon.

This is a claim of the Ku Klux Klan, as I understand it. The discriminatory policy, however, is justified on the basis of the past unjust oppression and continued potential for unjust oppression. The preferential treatment accorded to women and Blacks is justified on these exceptional grounds. The KKK's claims are unjustified on these exceptional grounds. They have not suffered unjustly from the oppression of their rights.

If our world showed no trace of past unjust oppression, if women and blacks and other such groups, held positions in all aspects of society in proportion to their population, and if the potential for continued oppres-

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Je me souviens

by George Athipis, BCL II

I remember a time in Quebec when it did not matter what language one spoke. I remember that as a Greek-Canadian-Quebecois, primarily English-speaking but aspiring to bilingualism, I could go about my business in the language of my choice wihtout the possibility of being labelled, rejected or even spat-on. Today, no longer do I enjoy a freedom of choice as the language debate has taken a turn in the wrong direction. Recent commentary on the issue has fallen short of my expectations so I have decided to present my view of the situation.

Are Anglophones Threatened in Quebec?

There can be no objective answer to this question because there is no identifiable anglophone group *per se*. Rather, "anglophonism" ranges from mild to severe. Personally speaking, my lack of fluency in the French language inhibits me in certain circumstances but the result is frustration rather than fear. Fortunately, I feel I can change this in the near future. Consider, however, the different cases of "anlophonism" along the spectrum and perhaps one can understand why some would feel threatened. If so, why should they? Cannot we allow the market decide the language of commercial signs or services offered? If there is a demand for a certain service in French, it

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Quote of the Week

Martin Boodman in Special K I:

"I think the case is wrong, but I don't know if I'm right."

Prof. Toope in NCP (Careers Day - cont'd):

Student: "Can a sheriff have a deputy?"
Prof. Toope: "Oh, yes. You can wear a badge and everything.... It's a career option for any of you."

ANNOUNCEMENTS

Are you from Prince Edward Island? The Law Society of Prince Edward Island is offering a scholarship to students from P.E.I. who will be enrolled in law school during the 1989-90 academic year. Applications close on the 15th of July 1989. See Associate Dean Jutras for further information.

Law Games Pictures

The yearbook is looking for black and white or colour pictures for this year's book. Please put the print in an envelope and leave it in the LSA committees' box in the LSA office or give it to Karen Amaron or Ali Argun.

Delta Theta Phi Presents
"Balderdash - The Live Version"

Come have fun and laughs at this pre-Skit Nite warm up.
12 Noon- 2 pm Moot Court
Admission $1

The Delta Theta Phi Law Fraternity at McGill in conjunction with the Skit Nite Committe is presenting "Balderdash - The Live Version" on Wednesday March 8, 1989 between Noon and 2 PM in the Moot Court. This event will be a warm up for Skit Nite. Some of you might be wondering what the hell "Balderdash ' The Live Version" is. Well, we have invited several prominent members of the Montreal community, including CBC television personality Dennis Trudean and our own constitutional expert, Stephen Scott, who will square off against each other in a live version of the popular board game Balderdash. The object of the game will be for the panelists to invent definitions for off-beat English words. They will then try to convince the audience that their definitions are correct. In other words, they will lie. The audience will then participate by voting for what they think is the correct definition. Admission will be $1 with proceeds going to the Skit Nite charities, i.e., the Old Brewery Mission and Chez Doris. Come have fun, laughs and contribute to a good cause.

François Hébert, Université d'Ottawa, voudrait faire un transfert à Montréal pour le Barreau. (613) 231-7709, (514) 739-8309.

Maîtrise en droit de la Santé
Université de Sherbrooke

Depuis le mois de septembre 1982, l'Université de Sherbrooke offre un programme de maîtrise en droit de la santé.

Sans équivalent en Amérique du Nord, ce programme porte sur les divers aspects légaux, sociaux et administratifs du droit de la santé. Il comprend ainsi un enseignement dans les matières suivantes: introduction au droit de la santé; droit médical (responsabilité civile et pénale médicale - médecine moderne); organisation administrative du monde de la santé; droit sanitaire international et législation comparée; droit du travail dans le secteur de la santé.

Le programme de maîtrise est ouvert aux bacheliers en droit ainsi qu'aux professionnels de la santé disposant d'un diplôme universitaire et d'une expérience jugée pertinente. La réussite de la scolarité et la rédaction d'un essai conduisent à l'obtention du diplôme de Maître en droit (LL.M.).

Diplôme en droit de la Santé

Un diplôme en droit de la santé (D.E.S.) est également offert depuis septembre 1986. Il s'agit d'un diplôme de deuxième cycle comportant 30 crédits et basé sur les mêmes exigences de scolarité que la maîtrise.Pour tous renseignements, prière de s'adresser au:

Directeur du programme
Maîtrise en droit de la santé
Faculté de droit
Université de Sherbrooke
Sherbrooke, Qué J1K 2R1
(819) 821-7518

Summer Clerkships in Australia

I have been advised that the summer clerkship positions in Australia which I advertised last fall have now been filled. Students who have not yet been notified that their application has been accepted should now assume that they have not been chosen.

Daniel Jutras.

Judicial Clerkships,
Appeal Division of the Supreme Court of Nova Scotia.

The Appeal division of the Supreme Court of Nova Scotia is currently recruiting law clerks for the period of August 1, 1989 to July 31, 1990. The salary is $24,000 for the year, and the deadline for applications is May, 1 1989. See Associate Dean Jutras for further details.

Nuclear deterrence and the law

Margaret Gouin, Canadian president of Lawyers for Social Responsibility and Glenn McDonald, LL.B II will examine nuclear deterrence from a legal perspective, this Wednesday, March 1 at noon (in Room 202). The focus will be on NATO's policy of the first use of nuclear weapons and the Nuclear Weapons Legal Action, a legal initiative now under way to challenge this policy in Canadian courts.
Presented by Lawyers for Social Responsibility.
Le regroupement des avocats en faveur d'une conscience sociale organise, mercredi le 1er mars à midi (au local 202), une conférence où vous aurez le plaisir d'entendre Mme M. Gouin, présidente des Avocats en faveur d'une conscience sociale et M. Glenn McDonald, LL.B II, l'intérêt de ces deux chercheurs se situe au niveau des possibilités de révision judiciaire des décisions gouvernementales en matière de défense. En vertu de la prérogative, le gouvernement du Canada prend des décisions qui nous concernent tous, par exemple lorsqu'il adhère à la position de l'OTAN qui prône le premier

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Compulsory Language Requirement Discussion Paper

McGill University Faculty of Law Curriculum Committee

The Faculty of Law at McGill University seeks to be a national law school. This means that the Faculty should provide education in, and encourage the development of, both the common law and civilian traditions; and that it should promote both English and French as languages of work and instruction. In practice, however, English is the dominant language of instruction, and students need no more that an elementary understanding of French in order to graduate with both the LL.B. and the B.C.L. degrees. This has created a number of problems that are worthy of concern.

Some of these problems arise from the relationship between the French and English languages within the Faculty. For example, some students and professors perceive an incomplete integration among the anglophone and francophone students; and it is feared that the dominance of English in the Faculty might act as a disincentive for some francophone applicants for admission. Other problems bear on the relationship between the Faculty and the legal community as a whole. Among these problems is the question of whether law firms and others can hire McGill graduates with confidence that they possess the linguistic qualifications to practice law in the jurisdictions for which they have the basic legal training. There is also the question of McGill's position in the community of Canadian law schools, and in particular, its position as a centre of unique and important legal education and research.

The Curriculum Committee has been asked to explore the possibility of introducing compulsory language requirements into the curriculum of the Faculty. If the compulsory language requirement were in effect, students would be required to take a certain number of courses in both English and French. In practice, this means that anglophone students would be obliged to take courses in French. Before considering the broad form of a language requirement and the technicalities of its implementation, we must first reach a consensus on the role of bilingualism at McGill. This in turn compels us to define clearly what we mean when we say that McGill is a national law school.

McGill As a National Law School

There are a number of possible conceptions of the idea of McGill as a national law school. For example, one might establish as an ideal the objective that all graduates be competent in both languages and both legal traditions. This would imply an intense language requirement. Alternatively, a national law school might be one in which students from all parts of Canada can receive a legal education that will equip them in their home jurisidictions, while at the same time exposing them to the other linguistic and legal culture. This conception would imply a less stringent language requirement.

In choosing between these ideals, one must take into account a number of practical considerations, not the least of which is the demand for the type of education offered. Would more francophone students be attracted to a Faculty in which English was less dominant? Would a language requirement attract more anglophone students from regions of the country where there is little opportunity for adequate preparation in French?

The possible incentives and disincentives return us to the basic conception of McGill as a national law school. If a language requirement is a disincentive for some candidates for admission, is the Faculty willing to accept that as a necessary cost of ensuring the proper training of those students who choose to come to McGill? The Curriculum Committee believes that the costs, if any, are worth bearing.

The Intensity of the Language Requirement

The Curriculum Committee originally considered a rule in which all students would be required to take a small number of credits in French and English. The Committee decided, however, that such a language requirement would be little more than symbolic. A more constructive rule would be one that requires nine to fifteen credits in French and English.

The next question is how to reconcile the general principle of a language requirement with the fact that McGill has three different programmes of legal education: the B.C.L. Programme, the LL.B. Programme, and the

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Announcements
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usage des armes nucléaires lors d'un conflit avec les Etats membres du Pacte de Varsovie. De telles décisions, sont-elles en violation de notre droit ou du droit international?

Skit Nite '89

We need scripts!
Please see Brian Shiller with your ideas this week.

Byers Casgrain

All second year law students:
We are recruiting stagiaires for the 1991 articling period. Should you be interested to article with our firm, we would ask that you remit to Ms. Sharon Kuzminski, Assistant Admissions Office, to the attention of the undersigned, your curriculum vitae and your university results, before 4:00 P.M. on March 7, 1989.
Our recruiting committee will review all applications submitted and will proceed to interview as many candidates as possible at McGill on March 9, 1989.
We also welcome applications from second year students currently enrolled in the National Program or who are considering this option, even though those students will only become stagiaires in 1992.
Nicolas Beaudin

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Calendar of Events

Feb 28 to Mar. 3 — Legal Theory Programme - Distinguished Visitor: George Fletcher (Faculty of Law, Columbia University). Professor Fletcher will give two seminars on crime and punishment and one on loyalty open to faculty and students making a prior commitment to attend and do the readings. He will also deliver one public lecture.

Mar. 1 — Nuclear Deterrence and the Law
Presented by Lawyers for Social Responsibility
Room 202, 12h00

Mar.2 — CoffeeHouse, sponsored by **Borden Elliot**
Complimentary Refreshments

Mar. 3 — Ski trip to Mont Sutton

Mar. 4 — Party des Langues Union Ballroom with Université de Montreal Law Happy Hour : 9 - 10 p.m. Admission : $ 1.01

Mar. 8 — Balderdash - The Live Version
Presented by Delta Theta Phi
Moot Court
12h00

Mar. 9 — LSR and Skit Nite Coffeehouse
Common Room, OCDH
19h00 - 23h00
Live Talent, Baked Goods, and Drinks!
Come one, come all ....

Mar. 10 — Legal Theory Workshop
Robin West (Maryland)
Room 202, Chancellor Day Hall
12h00

Where Are They Now?

by William Boulet, B.C.L. III

In a desperate attempt to make law more "meaningful" to the average student, *Quid Novi* has sent out a team of investigative reporters to find out what becomes of those caselaw characters who inhabit the minds, and win the hearts, of law students everywhere. Who, in a rare moment of wistfulness, has not wondered what ever became of "la petite Jeannine" of Montreal Tramways fame (and size 12 shoes)? Who has not itched to drive out to Gray Rocks Inn to see if they ever fixed their windows? Who has not anguished over whether Mrs. Cataford ever had another child?

These, and other, questions are what prompted *Quid Novi* to open a new column entitled **Where Are They Now?** We hope it will address some of the more basic issues about the law. Such a column, however, cannot exist without you. In fact - and this may come as a real surprise - Law School (with the possible exception of Prof. Simmonds' lectures) cannot exist without you. We therefore urge you to send in your questions. Share your concern, and we will endeavour to trace those victims of chance,

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Future of Careers Day in Jeopardy

by Ethan Friedman, LL.B. IV

It looked innocent enough - some friendly hobnobbing and jovial schmoozing in the Common Room among the certified elite and the soon to be initiated. Yet that fateful afternoon of January 20 may live on in this institution as the infamous day that recruiting violations spelled the end fo the annual Careers Day love-in. Faculty members and student organizers are stunned to have learned that the National Canadian Association d'Avocats has begun a full investigative inquiry into a series of discreetly illicit agreements struck between talent scouts and varsity confirmed standouts.

Reliable sources confirmed that at least twenty Faculty franchise builders were approached - pawns in an intense battle to woo away blue chip properties to professional paydirt. An N.C.A.A. official was not at liberty to disclose all the charges but they are said to include clandestine chats in the men's lavatory promising a starting line-up position at partner level salaries, free cellular telephones, free dry cleaning, no coffee and danish running and complementary word processing to ease the endless slogging of third and fourth year.

The story of one prominent upper year scribe reveals the lurid contours of the operation in action. The informant Ben Q. (not his real name) is among the top performers at his position. His teacher, Ron Starr, calls him, "the most aggressive, unselfish and hard-working kid I've ever had the pleasure of coaching since I left Canarsie." The senior is averaging twenty two and a half pages of notes per lecture and has been dishing out Carswell gift certificates at the tune of $200 per session. Ben Q. committed himself early to stay on the island to be close to the inner city Town of Mont Royal courts where he honed his talents, yet his prowess was leaked during freshman year by team chief McMuffin and New York, Toronto and Vancouver representatives have been hounding him ever since. Ben Q.'s case is particularly disconcerting in that, surrounded by a horde of salivating wolves in the Common Room, attempts were made to inebriate the young man with 7-Up and gorgonzola cheese dip so as to trigger a careless change of heart. According to Q., a particularly obsessed Torontonian weasel offered season tickets to games of the indoor soccer franchise and part ownership in a Missassauga pinball arcade and Ajax head shop.

It will not be until some time in the spring that the full sanctions become known. Given the possibility that there may be some administration-aided leaks and siphoning off, the likely penalty is that of probation. This could potentially keep the Faculty out of mid and postseason competitions such as Jessup and Rousseau bowl appearances.

Should the institution be formally charged, sometime Professor Julius Grey has offered his legal services on a *pro bono* basis. "We never thought this could happen at McGill," an organizer lamented. "But I guess those mid-court season tickets to Miami Heat games and free trips to Plattsburgh and Scarborough were too hard to resist."

Where are they
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those deadbeats of fortune who, over the years, have melted the hearts of even the most callous of Law School louts.

Sullivan* v. *O'Connor

We start with a plastic surgery case which should be of particular interest to BCL II students (and anyone interested in adopting a new "look"). Plaintiff is an actress who in 1973 entered into a contract (or a tort, if one is to believe Professor Stevens) to have plastic surgery performed on her nose. After three painful and unsuccessful operations, plaintiff was left with what the judge - somewhat uncharitably - described as "a concave line to about the midpoint at which it became bulbous". Plaintiff was awarded damages in the amount of x (where x is equal to 1 - 2 + 3(a) up to and including y - z) on the condition that she successfully calculate the amount. *Sullivan* v. *O'Connor* will always be remembered as the case that first posed the famous legal question: "What is the value of a botched nose?"

Quid Novi found plaintiff (quite easily from her description) in her dressing room on the set of her latest movie *Elephant Man II*. She spoke without bitterness of the man who changed her life - and cured her sinus problem in the process. "It was horrible"

cont'd on p. 12

LL. B. III Bolts for the Door

by Melinda Munro, V.P. Common Law

The fact that about two-thirds of the 1989 LL. B. class is leaving has been a much-whispered about topic in Chancellor Day Hall for sometime. As V.P. common, I think that it is my responsibility to move it from the realm of whispers to a topic of open discussion and reflection in the Faculty.

In the light of the cyclical review and proposed changes to the National Program it appears to me that the issues involved in the mass exodus of the class are more serious than just copping out in favour of big Toronto salaries. In fact the vast majority of law students in Canada do three year degrees and there is nothing about having the LL.B./B.C.L. that makes a person more or less competent as a lawyer. The fact that all of the people graduating this year have good jobs is a positive reflection on McGill and on those students.

When I decided to broach the topic, I canvassed various students as to their opinions. My sample included people from all classes and a number of members of the LL.B. class both leaving and staying. One of the most interesting things to note was that the vast majority of the people I talked to asked that their comments remain anonymous. Therefore what will follow is not the opinion of the LL.B. III class generally, but is a collection of the comments made, including my own as I am graduating too.

Before I get to the meat of the article, I want to include some of the demographic statistics of the class. These figures were obtained from the 1987/88 Admission Committee report.

	86/87	87/88
Undergraduate University incomplete	17	19
Undergraduate University complete	25	18
Post-graduate	10	15
Geographic origin:		
Western provinces	17	11
Ontario	16	23
Quebec	16	16
Maritimes	2	1
Age:		
0-18	0	0
19-21 yrs	4	11
22-24	31	21
25-27	8	9
28-30	4	6
31+	5	5

WHY IS A FOURTH YEAR OR A B.C.L. DEGREE NOT COMPELLING THE LL.B. III CLASS TO STAY?

"Law school is not an academic pursuit." -at least not at the Bachelor level. If one wants academics, you can do an LL.M. in one year and be more enriched academically. The problem with a fourth year at McGill is that it is a fourth year of mechanics. Nothing in Security on Moveables or Immoveables is going to make the Civil Law any clearer or more theoretically interesting. In second year obligatory courses there is adequate foundation in the Civil Law to allow interesting comparasion. Therefore, for the fourth year to be compelling it has to be of real practical value.

"The Education here is not comparative." Except inr ather rare instances, we were not encouraged to compare legal systems. The common attitude among teachers in both streams was 'don't ask me about the common/civil law because -
a) I don't have the other degree,
b) I don't know anything about it'
and ' of course you won't get this or you will find it hard because you are common/civil lawyers'. This is occasionally punctuated with demands for instant recall of the one system or the other which reinforces feelings of 'bi-juridical incompetence'. The only real attempt at comparison was in National Civil Procedure which doesn't lend itself to that treatment as well as contracts or delicts.

"ALL THE LAW FIRMS OUTSIDE QUEBEC SAY NOT TO BOTHER WITH THE B.C.L." Without sounding like a materialist, $30,000 articling salaries are pretty tempting to students whose debts are now traded on the NYSE. That in and of itself may not be enough to kill the fourth year but it is when combined with seven or more years of education and parents who don't say hello anymore, they say get a job. One comment made was that McGill doesn't encourage out of province students to spend their summers in Montreal through the summer student program. The upshot of that is that students return to their homes in common law jurisidiction and further lessen the desire to do the National Program. What all this adds up to is that there is not much in the way of external reinforcement for the National Program.

"LIFE AT MCGILL IS AN ADMINISTRATIVE NIGHTMARE." This attitude was held by almost every person approached. Certainly this class had to deal with the Cotler Scott consitutional law problem, not to mention the Constitutional law final exam. Then there was the Obligations II problem, compounded by the fact that we were told in no uncertain terms that the professors did not want to be there. Lastly, the first experiment with National Civil Procedure. No single one of these events is enough on its own but in combination they do not create an atmosphere of ease of student life.

"NO EFFORT IS MADE TO SUPPORT THE COMMON LAW CURRICULUM." An often heard remark was that McGill is a central Canada school i.e. it teaches everthing as if the only two jurisdictions in the world were Ontario and Quebec. There has also been a problem in providing enough depth of courses for the LL.B. There is no Remedies courses or Wills and Estates this year. This may be a factor of not having enough Common Law professors but that in itself is indicative of a problem with the LL.B. program.

"I DON'T REALLY FEEL VERY WELCOME HERE." One interesting observa-

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Computers Are Hot!

by Randy Marusyk and Colin Baxter, B.C.L. III

Our new computer network system has finally arrived! This system is being added to our existing computer facilities located on the 4th floor of the library. The network is a "state of the art" Novel 286 system giving McGill Faculty of Law one of the best law student computer facilities in the country.

The network system will connect all of the current IBM computers to a new AT-80 Megabyte hard disk drive computer. The accompanying network software will allow each IMB computer to access all of the application software that will be stored on the 80 Megabyte hard disk drive. Student users need only bring a storage disk for their own files. Don't panic, the application software (Wordperfect) will function exactly as it always has in the past.

With the 80 Megabyte hard disk drive, we will be able to acquire many different types of software. In particular, this will give us the opportunity to expose students to a wide variety of legal software, which we hope to acquire soon. In addition, peripherals, such as the laser printer, will now be accessible from all IBM computers linked into the network.

This new network system will also allow us to modernize our database accessing capabilities (Quicklaw, SOQUIJ, etc). With the addition of a modem, each IBM computer will be able to communicate with legal databases. The software for database access will be available within the network system.

Student users will receive a user code and a personal password, which will change each term, upon payment of a semester computer fee. To gain access to the network, the student must "sign-on" using the user code-password combination. Not only will this limit unauthorized use of the computers, but it will soon be able to end the abused "honour payment system" that is currently in operation concerning the laser printer. For those of you who owe money from using the laser printer, please bring your accounts up to date.

Good news for all Apple MacIntosh users. A new 20 Megabyte hard disk drive has been ordered for the Apple computers which will substantially increase their power. What is more, the Novel 286 network system will eventually be interfaced with the Apple MacIntoshes, allowing "Mac" users access to the laser printer. In the past, the inability to use this printer has placed MacIntosh users at a disadvantage.

It is hoped that in the near future, the complete network system will be interfaced with the McGill University mainframe. In addition to its functions as student microcomputer workstations, the network will allow us to use a whole range of applications heretofore unavailable, including electronic mail, access to UNIX, and perhaps most beneficially, the full MUSE library searching capability.

We are finally equipped with a state-of-the-art computer system. On March 9, we will be proposing a modest fee-assessment for its maintenance and upkeep. We encourage all students to use the existing systems and to vote "YES" on the upcoming assessment. More details to follow.

LLB III Bolts
cont'd from p. 6

tion made was that because of the number of dominant personalities in other classes our class may have been subtly elbowed out of participation in faculty activities. Some people considered us nerdy, others too mature for the kind of activities aimed at first year students. Whatever the problem was, it is true that the LL.B.III class was labelled as dull, super-serious, and uninvolved to the extent that the sentiment is echoed by this years first year class.

"THE PROFESSORS HAVE LABELLED US A DULL AND HOSTILE." It becomes hard to be thrilled about a fourth year in a school where the professors consider you: a) not as bright as last years class or this years class, b) not too bright in general, c) their worst teaching experience, d) hostile, e) uncaring about the Civil Law or the French language. Some of these impressions are the fruit of rumours, others come from being told point blank that they were true. They may be isolated in terms of persons or events but again when'stacked one on top of the other' they can have a depressing effect. Something which ran through many of the remarks was that there is an undercurrent of elitism at McGill which gives the place an unpleasant aura.

"THERE COULD BE A REAL SNOWBALL EFFECT." One theory offered is that when some of the more dominant personalities decided to leave they tipped the scale for some of the 'iffy' ones. That may be true and it has been suggested that the departure of the third year class has begun to impact the LL.B. II class in a similar way.

I don't think that any one of these groups of responses is singularly responsible for the problem. It is likely the combinations which are creating the effect. However, I do believe that they raise serious questions about life in the faculty which need to be addressed by students and faculty. This article is intended to be provocative although even I was surprised at the strength and in some cases bitterness of the responses I received. Again, this is a collection of impressions and not the general opinion of the class or of any single person in the class.

I invite comments.

Curriculum
cont'd from p. 3

National Programme. It seems reasonable that the number of language credits required should be proportional to the total number of credits required for graduation. An additional problem arises with the LL.B. programme because there are fewer French language courses available to LL.B. students. The problem of choice will be explored below.

The Timetable for Completing the Language Requirement

The objective of encouraging the early integration of the linguistic communities suggests that the language requirement should be completed early in the student's law school career. Accordingly, the Curriculum Committee considered the possibility of requiring students to take a certain number of language credits in their first year. Upon reflection, however, it seems wiser to spread the language requirement over the student's entire three or four years at McGill. This would provide greater flexibility in fulfilling the requirement, and this in turn would attenuate some of the inconvenience that the requirement would impose. Moreover, some students from outside Quebec who would be enthusiastic about taking courses in French might nevertheless be daunted by the prospect of having to do so in their first year at law school.

Implementation and the Choice of Courses for the Language Requirement

French language courses available to B.C.L. students and National Programme students who begin in the B.C.L. stream: 56 credits

French Language courses available to National Programme students who begin in the LL. B. stream: 40 credits

French language courses available to LL.B. students: 28 credits

The above figures reveal that the range of choices for LL.B. students is much narrower than for other students. The practical range is even narrower than the figures suggest. Of the 28 possible credits, 9 are in first year courses. Of the remaining 19 credits, only 7 can be said to be in "mainstream" courses (Business Association and Judicial Review). Moreover, the contents of the French language and English language Business Associations courses have in the past been remarkably different, so a choice between sections is much more than a choice of the language of instruction.

Because of the extreme narrowness of the range of French language courses available to LL. B. student one of three courses will have to be followed:

(1) Impose the same language requirement for all student, and increase the number of French language courses available to LL.B. students. This could be accomplished in part by offering the abbreviated courses in Obligations I, Obligations II and Civil Law Property in French.

(2) Establish a less stringent language requirement for LL.B. students than that applied to other students.

(3) Establish a less stringent language requirement for all single stream students than that applied to National Programme stu-

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dents.

Each of these options has special problems.

The first option would make it easier to implement the language requirement, but it would not meet all of the objectives of the requirement. If LL.B. students were able to fulfill their language requirement by taking the abbreviated civil law courses in French, the objective of integrating the linguistic communities would not be furthered: the abbreviated civil law courses would be largely composed of anglophones taking a course in French. Nevertheless, offering some of the abbreviated courses in French, and increasing the number of French language courses genereally, must be part of the language proposal.

The second option — imposing a less stringent language requirement for single-degree L.L.B. students — is more feasible than the first option, at least for the immediate future. In view of the narrower range of French language courses open to LL. B. students, it is also the most fair. A less stringent requirement also corresponds with the objective of reconciling the professional qualifications of graduates with the requirements of the jurisdictions in which they will practice. Conferring the B.C.L. degree on National Programme and B.C.L. graduates suggests that they possess all of the necessary qualification to practice law in Quebec. Among those qualifications is the ability to work in French. By contrast, LL.B. recipients are qualified to practice only outside of Quebec. Because the L.L.B. is from McGill, the student should be sufficiently familiar with French to be able to take a number of courses in that language; but because the degree is an LL. B. alone, the student should not be required to demonstrate the same level of linguistic competence as those who hold themselves out as qualified to practice in Quebec.

The second option has. however, one serious drawback. An unnecessary and invidious distinction is created if the diminished requirement applies only to LL.B. single-stream students and not to B.C.L single stream students. This contradicts the objective of encouraging greater integration of the various communities within McGill.

The third option envisages a language requirement in which both B.C.L. and LL.B. single stream students are obliged to take fewer French and English Language credits than National Programme students. This option addresses both the problem of choice, and the fact that National Programme students have more time in which to complete the language requirement. It also treats students in both single-degree programs equally. The Curriculum Committee therefore believes that this option should be adopted.

Recommendation

General

The Curriculum committee recommends the following compulsory language requirement:

1. National Programme students will be required to complete 15 credits in each of the French and English languages during the course of their studies at the McGill University Faculty of Law.

2. LL.B. and B.C.L. students will be required to complete 9 credits in French and English during the course of their studies at McGill University Faculty of Law.

3. The language requirement will be introduced as part of the curriculum for the class entering in 1990. It will not affect students who are presently enrolled, or those who will enroll in the fall of 1989.

Miscellaneous Technical Considerations

4. The language requirement as envisaged by the Curriculum Committee would not alter the student's option to write examinations in the language of his or her choice.

5. The Faculty will make every effort to increase the number of French language courses. This might include offering some of the civil law abbreviated course in French, but other French language courses would have to be added as well. Some of the new French language courses must be " mainstream" upper year courses to avoid compelling students to take courses for the sole purpose of fulfilling the language requirement. In addition, the letter of admission for LL.B. National Programme entrants should inform them that they would have a greater choice of French language courses if they were to begin the National Programme in the B.C.L. stream.

6. The Curriculum Committee recommends that officially approved outside courses taken in French or English at other Law Schools and in other faculties at McGill be applicable to the language requirement.

7. Some credits awarded for non-course work should be applicable to the language requirement. Among these would be moots and term papers. The Associate Dean (Academic) would make decisions on the applicability of other non-course credits as the need arises.

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sion no longer existed, then the preferential treatment would no longer be justified. The discriminatory policy of affirmative action programs would not be justified because the "exceptional grounds" would not exist. We would be a truly unprejudiced society with equal opportunity for all. This, of course, is not the case.

The Supreme Court of Canada recently shot down Bill 101 as having infringed upon a fundamental freedom - the freedom of expression. By utilizing the notwithstanding clause Quebec has demanded that preferential treatment be given to the French majority. I believe there is justification for a French language policy. But "justice must also appear to be done". I believe Quebec has failed in this.

There is a basis for the French-Québécois claim of unjust oppression. Indeed, I accept that the potential for oppression continues to exist. Quebec has a unique place and role in North America (I will not discuss here the "distinct society" notion which may or may not be a different issue.) I believe that the French-Québécois do have a collective right, and so a right to preferential treatment in Quebec. The Quebec government therefore has a responsibility to protect this group from such potential oppression and to correct the past oppression.

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makes good business sense to offer it in that language. A businessman who does otherwise is simply making a mistake. Of course, the same can and should be said for offering a service or displaying a sign in English. My confrère, Pierre Larouche, states the following in an article published in the *Quid* ("Le Nez de Bourassa"):

"Il me semble, en effet, difficile de soutenir que l'affichage en anglais chez Eaton ou chez Steinberg est si essential à la minorité anglophone qu'elle ne puisse survivre sans celui-ci."

This attitude is, with all due respect, ethnocentric for one can easily reply, "Why should the Francophone majority concern themselves with these English signs?" and the debate would rage on in a vicious circle. If Steinberg's or Eaton's elects to pursue such a policy - which is ill-advised from a business standpoint - so be it. The important thing that remains constant throughout is the element of choice. In this respect, it seems to me that Loi 101 and Loi 178 go too far in taking away this freedom to choose. It is the premise in the laws which I find objectionable and some find threatening.

Protecting the "Visage Français"

First, let me say that I am not exactly sure what is meant by the "visage français" which has been repeatedly asserted as justification for Loi 101 and Loi 178. Second, even if we accept the "visage français" of Quebec, is it being compromised by the presence of English sign alongside it? I refer you again to another passsage in my confrère's article:

"L'affichage unilingue français ne visait pas à oblitérer l'anglais, mais bien à assurer le visage français du Quebec, conformément aux voeux de la majorité, dans un domaine où les enjeux individuels sont moindres."

There are several things that are questioanble in this passage, two of which I will point out below and another later in the article.

First, it seems to me that the basic premise of a "visage français" is presumptive and mistaken. Certainly, there is no denying of a French majority and way-of-life that characterizes Quebec's society but there are also other elements included. One of these is a large English-speaking minority. (As a matter of fact, Montreal is the third largest English-speaking city in Canada). Perhaps then, we should be speaking of a "visage Quebecois" instead, which includes several "faces" in addition to the "French face".

Secondly , it seems to me that Loi 178 (and Loi 101 before it) amounts to obliteration in fact, save for the exceptions for cultural shops and the like. One must ask whether it is necessary that outdoor English signs be eliminated in order to preserve and protect a French face to Quebec. In my opinion, the connection between the alternatives is tenous at best, for even with the presence of English signs, it cannot be said that an outsider would fail to regard Quebec as primarily a French province. More importantly, is it acceptable to conceal the English face of Quebec? It is just as much a part of Quebec society as any other culture here.

Do Minorities Have Rights?

My confrère dutifully reminds readers that anglophones are a minority and that protecting the "visage français" is but conforming to the will of the majority. As an aside, I would first point out that polls on the language issue indicate that a majority in Quebec does not object to bilingual signs. Secondly, I would say that my confrère's perception of democracy is slightly outdated. It is true that we elect a government and pass laws according to majoritarian principles as a general rule. There are some rights and freedoms, however, that we place above governemental control in order to prevent democracy from becoming a "tyranny of the majority". One

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WHAT'S A HORSE'S MOUTH?

Dear *Quid*:

I was incensed to read Ali Argun's article "Gift Horse's Mouth Looked Into!" It was gratuitous, self-serving and way off base.

In the first place, only in a serious fit of hyperbole could one describe Ms. Tremain's remarks as a 'mire of ungratefulness'. She said, and I quote, "I'd like to thank you too on behalf of our women; and I'd like to say in a light-hearted way, but also in a serious way, that some of them may be advocated for, defended, or even prosecuted by some of you."

Secondly, whereas it is indeed true that we have no legal obligation to contribute to Chez Doris, I, for one, have a problem with living in a world where for many ventilation grates and garbage cans are their sources of warmth and sustenance; one where my dogs live in circumstances of greater material comfort than a significant proportion of this city's population.

I am more than mindful of all the hard work that went into making Skit Nite the financial success that it was, but more importantly I am painfully aware of the very real restraints on the $10,000 we raised. Organizations like Chez Doris and the Old Brewery fight an uphill battle and if their purpose is ever to become obsolete it will not be because of our limited benefice, no matter how inspired. And perhaps, just perhaps Ali, that was Ms. Tremain's point. Social change will only be occasioned when advantaged humans like us, particularily as future advocates, lawmakers and policy-shapers, consider the needs of the homeless to be important. In other words, if we really think that these people deserve our help and consideration, then let us work as lawyers for the alteration of the conditions which perpetute the problem.

Finally, I was wondering why it is that 'mature and responsible' law-students need such a big pat on the back to do the 'charitable' thing?

Robin B. Reid
BCL III

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The protection however must be relative to the oppression. There are always limits. If the government policy was to "hire only women and Blacks for the next 100 years", then it would be unjust. Equally, the complete exclusion of the use of other languages in Quebec would also be unjust. These limits were recognized by the recent Supreme Court decisions. Recognition must be given of the fact that rights are being infringed upon. This infringement should not exceed what is necessary.

The policy for protection is justified so long as the potential for oppression continues to exist. This recognizes the *exceptional* nature of the grounds for collective rights and raises concerns which must be addressed.

In North America, we have tried to give respect and protection to "fundamental rights" in our constitutions. A constitution is an expression of the will of the people of a country, of their will to live together as a country and of how they will live. It is much more than a piece of legislation, even more than the Civil Code. It should be treated as such. In my opinion, Quebec has not done so.

I do not believe the notwithstanding clause should be part of our Constitution. To me, this says that unreasonable limits, not demonstrably justified in a free and democratic society may override the Charter of Rights and Freedoms. Section 1 should have been enough. The Supreme Court also thought so.

The notwithstanding clause however is there. But as an exception to the Constitution, it should be given exceptional considerations. For justice to appear to be done, this consideration should be apparent. In my opinion it is not. If it were, perhaps the social tension would not be as great.

The collective right of the French-Québécois to the protection of their culture is not absolute. It is based on the *exceptional circumstances* of the past unjust oppression and the continuing potential for such oppression. The Quebec language policy discriminates against other languages. It attempts to deviate from the Constitution of our country and from the Charte québécoise des droits de la personne. Any such action should be treated exceptionally. It must be justified today, tomorrow and every day in which the discrimination continues. When the oppression stops, so must the discrimination.

Herein lies the essence of my opinion. If Quebec language policy is exceptional it should be treated exceptionally. It is this exceptional treatment which gives the policy the appearance of justice being done. If it is not exceptional, then it is a general policy. If it is not given exceptional treatment, then it is given general treatment. A general policy of preferential treatment based on language, sexe, religion, race, etc is discrimination and prejudism. It promotes racism. It is unjustified.
The final question , therefore, becomes: is Quebec's language policy exceptional or general? Time will tell.

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can argue that the "notwithstanding clause" in our Constitution was duly accepted and is therefore correct. This technical argument, although correct and unimpeachable in law, does not uphold the spirit of what the Constitution speaks to. For a government to employ such a loophole in this modern day and in such a society is a departure from democracy as it has come to be known.

Some may argue that the notwithstanding clause is but a remnant of the notion of parliamentary sovereignty and perfectly democratic. My answer to this is by way of reference to Canada in its pre-Charter days when fundamental freedoms and rights were merely whims of legal federalism. I think this era speaks for itself. The whole idea to bring home the Constitution and entrench a Charter of Rights and Freedoms was to abandon this unacceptable course of the past. By invoking the "notwithstanding clause", Premier Bourassa has chosen to disregard this progression. Such a policy and attitude is, in my opinion, something to be questioned and scrutinized for its potential use in the future is unknown.

Are the French in North Amercia Threatened?

Loi 178 has earned Premier Bourassa the wrath of some French-speaking Quebecers because it is regarded as conceding too much to anglophones. Ironically, Loi 178 is no more acceptable to anglophones than certain provision of Loi 101. The bottom line of both laws is the fact that they both compel a course of conduct that infringes one's fundamental rights, without objective and demonstrable justification.

Consider the situation in Florida today as a way of understanding the importance of preserving these rights. There is in Florida a substantial population of Quebecers who have set up shops to serve tourist-Quebecers, who openly display French signs and who generally speaking, exercise their culture as freely as they wish. Is this objectionable? Certainly not. Nor is anyone insisting that signs or services be in English only. (It is beside the point that such a policy would probably fail, given the American Bill of Rights.) It is in Florida, as it should be in Quebec, a question of choice.

The obvious rebuttal to this line of reasoning is the so-called threat to the existence of French in North Amercia. The argument, as I understand it, is the following: the French language and culture is a minority in North America and as such, there will always be a "natural dynamism" that will threaten it with extinction. It is the latter part of the argument which I feel is open to analysis.

It is true that there are several English-speaking influences - including the very significant mass-media influences - that surround Quebec and are bound to have an effect on Quebec's society. That is not to say however that these influences wil extinguish the French language and culture; this is, in my opinion, overstating the issue. A French way of life will always exist in Quebec if the French people truly want it to remain. This involves what I call an internal sensitivity. Francophone parents must make their children aware of and sensitive to the history of Quebec and instill in them a fierté for their culture that can be communicated to the next generations. The children, though, must understand and desire it for themselves; they have to make informed choices and realize the significance of watching "Lance et Compte" or L.A. Law. No longer do we

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accept ignorance as a justifiable way of protecting an individual from society and therefore we should not accept it as justification for sheltering a society from a world of which it is a part. It seems to me that the legislative intention in the past decade had the proper motivation but the wrong expression. The recent example is, of course, the culmination of the language debate.

Soon, as my confrère mentioned, the Free-Trade Agreement will be fully implemented which will undoubtedly increase English-speaking influences in Quebec as a matter of good business. Oddly, Quebec supported this agreement. How will these new influences be dealt with. It seems to me that the answer to this question and to other questions of legitimate concern to French-Quebec must come from a legislative policy that accepts and reconciles certain facts instead of denying them. The cause of French-Quebec should not be undermined in the least, but in fact, strengthened. It is my sincere belief that this can be accomplished without infringing the rights of minorities overtly through the legal system or covertly by instilling attitudes of superiority or even hatred.

Before we part, I leave you with a trivial, historical fact that has gained new respect, at least in my mind, and may perhaps shed new light on the situation in Quebec: the Greek culture and people survived 400 years of slavery-rule from the Ottoman empire under condition of near total repression and without the safeguards of the same democratic principles which Quebec has chose to shun.

Where are they now
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she recalls with a shudder, "Going into each operation wondering who I would look like next. Jimmy Durante? Donald Duck? It's like waking up in the morning to find the Tooth Fairy's smashed your nose in." She adds philosophically, "It takes a lot of guts to get up after that."

Despite her tragic misadventure, plaintiff's career did not take the expected dive. Her role as E.T.'s mother in Steven Spielberg's classic won her both critical and popular acclaim. She has gone on to star in such box office blockbusters as *Frankenstein's Kid Sister, Phantom of the Opera* and *The Barbra Streisand Story*. Plaintiff lives alone with her two dogs, a pug and a bulldog. In her spare time she studies advanced calculus at N.Y.U.